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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,229	04/02/2004	Virgil E. O'Neil	HENTE-095A	3023

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STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CA 92656

EXAMINER

KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

MAIL DATE	DELIVERY MODE
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10/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/817,229

Applicant(s)

O'NEIL ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 9, 13, 16, 17, 20, 22-24, 27-34 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 18, 19, 21, 26, 35, 36 and 38 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 10, 12, 14, 15, 25, and 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This is the third office action for application number 10/817,229, Suspended Platform for Water Heaters, filed on April 2, 2004.

Election/Restrictions

Claims 9, 13, 16, 17, 20, 22-24, 27-34, and 37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 17, 2006.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 11, 19, 21, 35, 36, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,758,010 to Wright. Wright discloses a suspended platform (10) comprising: a lower frame having a base (30) with side walls (22) extending from the base and joined to form a fluid tight container, the base having sufficient strength to support a small appliance thereon when the lower frame is suspended from support members (18); at least three connectors (86) each fastened to at least one of the side walls, each connector being configured to removably fasten a different one of the support members; wherein the at least three connectors comprise connector means (88) for passing the support members through a portion of the lower frame; wherein the side walls of the lower frame form a plurality of corners, the

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connectors comprise tubes located at those corners and connected to the side walls, the tubes being sized to allow passage of the support members; wherein the base is rectangular; at least four depending support members (18) arranged in a rectangle, the support members each having a distal end fastened to a different one of the four connectors; and a kit.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 18 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright in view of U.S. Patent 3,239,104 to Scholle or U.S. Patent 5,143,178 to Latham, Jr., hereinafter, Latham. Wright discloses the claimed invention except for the limitation of a drain fitting on one of the sidewall or base. Scholle teaches a platform (10) having a sidewall (11) and a base (13) wherein a drain fitting (12) is on the sidewall. Latham teaches a platform (10) having a sidewall and a base (12) wherein a drain fitting (15) is on the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the platform in Wright to have included a drain fitting positioned on either the side wall or the base as taught by Scholle and Latham, respectively, for the purpose of providing a means for draining fluid collected in the platform due to condensation disposed on the appliance.

Allowable Subject Matter

Claims 7, 8, 10, 12, 14, 15, 25, and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed January 16, 2007 have been fully considered but they are not persuasive. The rejections stand.

In response to applicant's argument that Wright discloses a display case for displaying an article, for example, a plant, flowers or the like, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's arguments, the recitation "an appliance" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In response to applicant's arguments that Wright cannot support the weight of an appliance, Wright need only be capable of supporting an appliance having a weight of about 500 pounds or more, since the appliance is not a positively cited limitation of the claimed invention. This is merely a functional limitation and it would have been obvious to one having ordinary skill in the art to have substituted well known materials for the materials used to construct the display apparatus in Wright based on the materials suitability of the intended use, i.e., is support heavy loads on the suspended platform.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Wright and Latham and Scholle teach platforms having a fluid tight container and both Latham and Scholle teach a means for draining fluid from the container. Neither Latham or Scholle need to mention an appliance since the appliance is not a element of the claimed invention and Latham and Scholle only need teach the lack element, i.e., drain fitting, not disclosed by Wright.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 5,507,237 to Barrow et al.

U.S. Patent 6,311,626 to Roberts

U.S. Patent 6,851,376 to D'Agostino


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Anita M. King
Primary Examiner
Art Unit 3632

October 1, 2007